

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERI BERNARD TWILLEY,

Defendant-Appellant.

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UNPUBLISHED

October 17, 2006

No. 261570

Wayne Circuit Court

LC No. 04-007893-01

Before: Murray, P.J., and O’Connell and Fort Hood, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of assault with intent to commit murder, MCL 750.83, felonious assault, MCL 750.82, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced as an habitual offender, fourth offense, MCL 769.12, to concurrent prison terms of 50 to 100 years for the assault with intent to commit murder conviction, and 5 to 20 years for the felon in possession conviction, to be served consecutive to a two-year term for the felony-firearm conviction.<sup>1</sup> He appeals as of right. We affirm.

**I. Underlying Facts**

Lamont Phillips (a/k/a “Black”) testified that, on the morning of July 19, 2004, he, James Matthews, and Randi Hill were working on a house on Nevada Street in Detroit. The three men testified that a silver Mercury Marquis pulled up and defendant and Frank Richardson emerged in turn, each pointing a gun at Phillips. Phillips and Hill described defendant’s weapon as a .38-caliber handgun. Richardson directed Phillips to the car, where he was accused of robbing one of defendant’s family members. Matthews pushed Richardson’s gun down. Matthews testified that defendant then told Phillips that “[he] should kill [him] now.” Phillips fled, running between several houses, and defendant “chased” him while shooting at him. As Phillips jumped over a fence, he was shot in the back. Phillips continued running until he reached a coworker’s house. During the incident, Phillips and Hill saw defendant shoot five or six times. Matthews

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<sup>1</sup> The trial court determined that the felonious assault conviction merged with the conviction of assault with intent to commit murder.

saw defendant shoot four times, but heard a total of five shots. Defendant and Richardson then left.

On July 24, 2004, defendant was arrested and interviewed by the police. Defendant's statement was read into the record. In the statement, defendant alleged that the victim had robbed someone defendant knew. Defendant admitted to the shooting, but alleged that he shot out of fear that the victim had a gun close by and was going to retrieve it.

At trial, defendant testified on his own behalf. Defendant maintained that, despite his inculpatory statement, he did not commit any crimes, and was not even in the area at the time of the shooting. With regard to his statement, defendant claimed that he had been shot three days before his arrest, and, during the interview, was suffering from "trembling pain," and under the influence of medication and "street drugs." Although defendant admitted placing his initials on the statement, he maintained that the detective "did all the talking," and he "was in so much pain [he] really wasn't paying what seeing or written down no attention."

## II. Motion to Suppress Statement

Defendant first argues that the trial court clearly erred by denying his motion to suppress his statement to the police because it was coerced. We disagree.

Whether a defendant's statement was knowing, intelligent, and voluntary is a question of law that a court evaluates under the totality of the circumstances. *People v Cheatham*, 453 Mich 1, 27, 44; 551 NW2d 355 (1996); *People v Garvin*, 235 Mich App 90, 96; 597 NW2d 194 (1999). Deference is given to the trial court's assessment of the weight of the evidence and credibility of the witnesses, and the trial court's findings of fact will not be disturbed unless they are clearly erroneous. *People v Sexton (After Remand)*, 461 Mich 746, 752; 609 NW2d 822 (2000); *People v Howard*, 226 Mich App 528, 543; 575 NW2d 16 (1997). A finding is clearly erroneous if it leaves the reviewing court with a definite and firm conviction that a mistake has been made. *People v Givans*, 227 Mich App 113, 119; 575 NW2d 84 (1997).

Statements of a defendant made during a custodial interrogation are inadmissible unless the defendant voluntarily, knowingly, and intelligently waived his Fifth Amendment rights. *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602; 16 L Ed 2d 694 (1966); *People v Abraham*, 234 Mich App 640, 644; 599 NW2d 736 (1999). Whether a statement was voluntary is determined by examining police conduct, while whether it was made knowingly and intelligently depends in part upon the defendant's capacity. *Howard*, *supra* at 538. The prosecutor must establish a valid waiver by a preponderance of the evidence. *Abraham*, *supra* at 645. In *People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988), our Supreme Court set forth the following nonexhaustive list of factors that a trial court should consider in determining whether a statement is voluntary:

The age of the accused; his lack of education or his intelligence level; the extent of his previous experience with the police; the repeated and prolonged nature of the questioning; the length of the detention of the accused before he gave the statement in question; the lack of any advice to the accused of his constitutional rights; whether there was an unnecessary delay in bringing him before a magistrate before he gave the confession; whether the accused was

injured, intoxicated or drugged, or in ill health when he gave the statement; whether the accused was deprived of food, sleep, or medical attention; whether the accused was physically abused; and whether the suspect was threatened with abuse.

No single factor is conclusive. *Id.*; *People v Fike*, 228 Mich App 178, 181-182; 577 NW2d 903 (1998).

Viewing the totality of the circumstances, the trial court did not clearly err in finding that defendant's statement was voluntary. Defendant did not testify at the hearing. The officer who interviewed defendant was the only witness. The trial court considered the officer's testimony, determined that it was credible, and noted that the officer was "very thorough," "his recollection was very, very good and he didn't seem to embellish anything." Defendant has not demonstrated that the trial court's finding of credibility was clearly erroneous. As indicated previously, this Court will defer to the "trial court's superior ability to view the evidence and witnesses." *People v Peerenboom*, 224 Mich App 195, 198; 568 NW2d 153 (1997).

Apart from his unsupported claims, defendant has not offered any corroborating evidence that he was coerced into making a statement. It is undisputed that defendant was advised of his *Miranda* rights before he was questioned, indicated that he understood those rights, initialed his rights, and signed a written waiver. There is no evidence that defendant was threatened, abused, or promised anything in exchange for his statements. There is likewise no evidence that defendant was intoxicated, or deprived of sleep, food, or drink.<sup>2</sup> In his appellate brief, defendant contends that he made the statement because he was in pain from a gunshot wound and wanted to promptly get the interview over with and return to his cell to lay down. But defendant's desire to return to his cell does not provide a basis for concluding that the police coerced him into confessing to a crime he did not commit. Also, as noted by the trial court, the interview was "very short," lasting only 45 minutes. Further, although defendant had consumed Tylenol three, there is no indication that he was medicated to a degree that he was not operating of his own free will.

With regard to defendant's personal circumstances, the record shows that he was 40 years old, had a tenth grade education, and could read and write. There is no indication that he had any learning disabilities, psychological problems, or was otherwise unaware and not acting of his own free will. Also, the record shows that defendant had previous experience with the police and the criminal process. Viewing the totality of the circumstances, the record does not leave us with a firm and definite conviction that a mistake has been made.

### III. Other Acts Evidence

Defendant next argues that the trial court abused its discretion by admitting evidence of unrelated other acts. We disagree.

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<sup>2</sup> Defendant was arrested at 6:10 a.m., taken to the hospital for a preexisting gunshot wound, brought back to the police station, and interviewed at 1:35 p.m.

Before trial, the prosecution moved to admit evidence of defendant's other crimes under MRE 404(b). Defendant challenged the admission of an act that occurred on July 12, 2004, on Woodward and Six Mile. Michael Langan indicated that he was cleaning his car when defendant approached him, pointed a .38-caliber gun in his chest, and clicked the gun, but it did not fire because it was stuck. As Langan tried to hide, defendant continued trying to shoot him and eventually shot Langan in his buttocks, and fled in Langan's vehicle. The second act occurred on the afternoon of July 18, 2004, on Nevada and John R. Ane Mihailovich indicated that defendant pointed a .38-caliber gun at his head, and took \$20. Defendant then ordered Mihailovich out of his car, and, when Mihailovich ran, defendant chased him with the vehicle. Defendant argued that the acts were inadmissible because this case involved a dispute with Phillips about defendant's niece, and the other acts involved carjackings. At the hearing, the prosecutor argued, *inter alia*, that the incidents occurred in the same geographic location, had temporal proximity to the instant offenses, purportedly involved the same weapon, showed an intent to kill, and rebutted defendant's claim in his statement that the shooting was accidental. The trial court granted the prosecutor's motion in part,<sup>3</sup> adopting the prosecutor's arguments.

A trial court's decision whether to admit evidence is reviewed for an abuse of discretion. *People v McDaniel*, 469 Mich 409, 412; 670 NW2d 659 (2003). An abuse of discretion is found only if an unprejudiced person, considering the facts on which the trial court acted, would say there was no justification for the ruling. *People v Ullah*, 216 Mich App 669, 673; 550 NW2d 568 (1996). A decision on a close evidentiary question ordinarily cannot be an abuse of discretion. *People v Sabin (After Remand)*, 463 Mich 43, 67; 614 NW2d 888 (2000).

MRE 404(b) prohibits "evidence of other crimes, wrongs, or acts" to prove a defendant's character or propensity to commit the charged crime. MRE 404(b)(1); see also *People v Knox*, 469 Mich 502, 509; 674 NW2d 366 (2004). But other acts evidence may be admissible "for other purposes, such as proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident when the same is material." MRE 404(b)(1). Other acts evidence is admissible under MRE 404(b) if it is offered for a proper purpose, is relevant to an issue or fact of consequence at trial, and is sufficiently probative to outweigh the danger of unfair prejudice under MRE 403. *People v Starr*, 457 Mich 490, 496-497; 577 NW2d 673 (1998); *People v VanderVliet*, 444 Mich 52, 55, 63-64, 74-75; 508 NW2d 114 (1993), amended 445 Mich 1205 (1994). In application, the admissibility of evidence under MRE 404(b) necessarily hinges on the relationship of the elements of the charge, the theories of admissibility, and the defenses asserted. *Id.* at 75.

On this record, we cannot conclude that the trial court abused its discretion. The evidence that defendant used a .38-caliber handgun around the date of the shooting was not offered to show that defendant had a bad character. Rather, the evidence was probative of the absence of mistake or accident, and assisted the jury in weighing the witnesses' credibility, particularly where defendant contended in his statement that he did not intend to shoot Phillips. Additionally, "[e]vidence of a defendant's possession of a weapon of the kind used in the offense with which he is charged is routinely determined by the courts to be direct, relevant evidence of

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<sup>3</sup> The trial court denied the admission of two other acts.

his commission of that offense.” *People v Hall*, 433 Mich 573, 580-581; 447 NW2d 580 (1989); see also MRE 401. The theories for which the evidence was admissible were legitimate, material, and contested grounds on which to offer the evidence.

Furthermore, the evidence was not inadmissible simply because the very nature of the evidence was prejudicial. The danger that MRE 404(b)(1) seeks to avoid is that of *unfair* prejudice, and defendant has not demonstrated that he was unfairly prejudiced. See *Starr, supra* at 499. Moreover, the trial court gave a cautionary instruction to the jury concerning the proper use of the evidence, thereby limiting the potential for unfair prejudice. Juries are presumed to follow their instructions. *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998).

Affirmed.

/s/ Christopher M. Murray  
/s/ Peter D. O’Connell  
/s/ Karen M. Fort Hood